IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.739 OF 2007

Shri Prakash Sadashiv Nikalje,)
Age:55 yrs., Occ.Business,)
residing at Anita Apartment,)
2nd Floor, Flat No.5,)
Jambolkar Chowk, Vanawdi,)
Pune.)
(At present in Arthur Road)
Central Prison, Mumbai.)) ...Applicant.
(Orig.Accused-5)

Versus

The State of Maharashtra.)
(At the instance of DCB,)
CID, Mumbai in C.R.No.150/05)) ...Respondents.

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Mr.H.H.Ponda a/w. S.V.Pradhan, Advs. for the Applicant.
Mr.K.V.Saste, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

Date of reserving
the Judgment : 2nd April, 2007

Date of pronouncing
the Judgment : 6th June, 2007.

ORAL ORDER :

1. Heard Mr.Ponda, the learned Advocate for the applicant-orig.accused No.5 and the learned APP for the State.

2. The applicant is seeking bail in C.R.No.150

of 2005 of DCB CID Mumbai (Tilak Nagar Police Station C.R.No.207/2005). The said case is under Sections 3(1)(ii), 3(2), 3(4), 3(5) of M.C.O.C. Act read with 384, 385, 386, 387, 504, 506(II), 120(B) of I.P.C. read with 3, 25, 35 of Arms Act.

3. The complainant is dealing in real estates in Tilak Nagar area, Chembur, Mumbai. On 10.12.2005, the complainant reported that he is working with a builder in Tilak Nagar area, Chembur, Mumbai. Gangsters Chhota Rajan (i.e. brother of present applicant), Bharat Nepali and their associates in Mumbai, which include accused Suresh Shinde @ Laxman, Kukku Daruwala, Rakesh, Pradip Madgaonkar @ Bandya Mama and others extort large sums of money from developers who, undertake redevelopment work of old buildings in Tilak Nagar, Naidu Colony, Ghatkopar and other areas of Mumbai. They give them threats of murder and also threaten that their relations and employees would be murdered in case the extortion demands are not fulfilled. They also threaten the residents and force them to give the redevelopment work to the developers of their choice. The complainant further reported that in the month of January,

2004, he was threatened on behalf of Chhota Rajan by Bharat Nepali that if they failed to meet their demands, they would kill the complainant and his family members and Rs.10 lacs as extortion amount was demanded from him which was delivered in two equal instalments of Rs.5 lacs. Even after payment of this extortion amount of Rs.10 lacs, the accused persons further demanded another sum of Rs.20 lacs from the complainant and threatened to kill him if he does not pay the amount. Complainant apprehended that he would be eliminated by the organised crime syndicate and hence he approached the police.

4. Thereafter coaccused Sujata Rajendra Nikalje i.e. wife of wanted accused Chhota Rajan came to be arrested. The applicant was arrested on 18.12.2005. The investigation revealed that huge amounts have been deposited in the account of the applicant i.e. orig.accused No.5 Prakash Sadashiv Nikalji @ Dada (elder brother of Rajendra Sadashiv Nikalje @ Chhota Rajan @ Nana @ Sheth, the head of the organised crime syndicate). He has bank accounts at Lonand Branch of Wai Urban Co-op. Bank Ltd.. During the course of

investigation, it has come to light that the applicant-accused No.5 - Prakash Sadashiv Nikalje @ Dada has extorted lacs of rupees from various persons.

5. The wanted accused Rajendra Sadashiv Nikalje @ Chhota Rajan @ Nana @ Seth i.e. the brother of the applicant and accused Bhagwantsingh Kuwarsingh Thakur @ Bharat Nepali @ Vijay who are based abroad are conducting their illegal activities through their associates and they are indulging in continuing unlawful activities in Mumbai, Pune and Thane areas. Members of the organised crime syndicate of Chhota Rajan, on the orders of Chhota Rajan and Bharat Nepali, are indulging in elimination of persons, contract killings, extortions, delivery of fire arms, mobile telephones and money to the members of the organised syndicate in order to carry out criminal operations and also to meet their financial needs including payment to the members of the gang, who are in jail and facing judicial trials. Chhota Rajan @ Nana @ Rajendra Nikalje and Bharat Nepali are in constant touch with the members of their organised crime syndicates on mobile telephones

for giving instructions and receiving information and also to collect extortion money, weapons etc., for their pecuniary gains. There are tape recorded telephonic communications between the members of the organised crime syndicate, recorded after following the due procedure prescribed by law.

6. There are recorded conversations between the earlier arrested accused and the head of the organised crime syndicate. The investigation also revealed that the arrested accused and their wanted associates have forced the developers and the committee members of the societies of the buildings under reconstruction to leave the project in favour of the developers of the choice of the organised crime syndicate.

7. The investigation reveals that the applicant-accused No.5 Prakash Nikalje is an active member of the above organised crime syndicate. The investigation reveals that a builder had some dispute with his partner. The partner resigned from the company and approached wanted accused Chhota Rajan. Chhota Rajan started

threatening the said builder on behalf of the said partner stating that the matter was entrusted to him by the said partner. The said builder was being threatened that he should not cause obstructions in the affairs of the said partner, and that otherwise, he would be killed. The builder was scared due to the threats and decided to convince wanted accused Chhota Rajan that, actually, the partner was in the wrong and that the builder was right. He took help of a person who took him to the house of the present applicant. The said builder informed the present applicant of the happenings and requested him to represent his case to Chhota Rajan. The applicant agreed and said that for doing that he would require money. Thereafter, the applicant along with another witness came to the office of the builder. The applicant contacted Chhota Rajan from his mobile phone and spoke to him about the builder. Then he made the builder speak to Chhota Rajan. The builder pleaded with Chhota Rajan not to harass him and also out of fear showed his willingness to pay him the money. Chhota Rajan replied that he would see. After about two days the applicant came to the office of the said

builder and informed him that he had told Chhota Rajan not to trouble the said builder and that Chhota Rajan having agreed to do so, the builder should not worry. Thereafter the applicant told the builder that if money would not be paid to the applicant, the matter would take a serious turn and again there would be danger to the life of the builder. The applicant demanded Rs.20 lacs in white and the builder paid the money by pay orders. Thus the applicant has accepted Rs.20 lacs as ‘protection money’ on behalf of the wanted accused Chhota Rajan who is head of an organised crime syndicate. The statement of witness who had requested the applicant’s intervention and had taken the builder to the house of the applicant is also on record.

8. Mr.Ponda, submitted that it was the parties who approached the applicant and not otherway round i.e. the applicant had not approached the parties. Hence, he submitted that the applicant had nothing to do with the criminal activities of his brother. However, it is seen that when the witness (builder) approached the applicant, the applicant had told the builder that if the money

was not paid to the applicant, the matter would take a serious turn and there would be danger to the life of the builder and applicant demanded Rs.20 lacs as ‘protection money’ on behalf of his brother i.e. wanted accused Chhota Rajan who is the head of an organised crime syndicate. From this fact, it is clear that the applicant abetted commission of organised crime by dreaded gangster Chhota Rajan. The present case is also under Section 3(2) of the MCOC Act, which deals with abetment of commission of an organised crime. Abetment has been defined in Section 2 of the MCOC Act. The relevant portion of Section 2 MCOC Act, reads as under :

> "(a) "abet", with its grammatical variations and cognate expressions, includes,---
>
> (i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organised

crime syndicate;"

9. Moreover there are telephonic conversations between the applicant and wanted accused Chhota Rajan which have been intercepted by following due procedure prescribed by law. These conversations clearly indicate that the applicant had discussions with Chhota Rajan regarding Chhota Rajan’s business activities and assisted Chhota Rajan in the business activities.

10. The telephone conversations between the applicant and his brother; and the statements of witnesses show that the applicant has abetted or knowingly facilitated the commission of an organised crime by organised crime syndicate.

11. The learned APP has stated that the applicant is financially powerful. There is reason to believe that he is likely to tamper with the witnesses/evidence, by using muscle power also. The learned APP has stated that one of the star witnesses namely Narsing Modi was brutally murdered on 26.10.2006 and a case vide C.R.No.116 of 2006 under Section 302, 34 IPC is registered at

Padgha Police Station, District - Thane and same is being further investigated by Local Crime Branch, Thane Rural Police. He has stated that in such circumstances, the applicant should not be released on bail.

12. Thereafter Mr.Ponda has further stated that coaccused Arun Baburao Patil has been granted bail by the Special Court by order dated 13.3.2007. He submitted that the case of the applicant is similar and hence the applicant may be granted bail on the ground of parity. On perusal of the material in the present case, it is seen that the case in respect of the present applicant and coaccused Arun Baburao Patil is not similar and hence no case of granting bail on the ground of parity is made out.

13. Lastly, it was submitted by Mr.Ponda that besides the present case the applicant is not involved in other cases and no charge-sheet has been filed against the applicant. As far as this aspect is concerned, it is pertinent to note that the law does not require that more than one charge-sheet ought to be filed before the

competent Court in respect of each of the accused persons involved in the case. But, the law requires that more than one charge-sheet has to be filed within preceding period of ten years in respect of an organised crime syndicate. In the present case, in respect of the organised crime syndicate of Chhota Rajan, more than one charge-sheet has been filed before the competent Court within the preceded period of ten years of which cognizance has been taken by the Court. Thus, requirements of Section 2(1)(d) of MCOC Act i.e. of "continuing unlawful activity" have been complied with. The applicant being an active member of the organised crime syndicate headed by wanted accused Chhota Rajan has actively participated in the continuing unlawful activities and has committed organised crimes.

14. Looking to all these facts, I am not inclined to grant bail to the applicant.

15. Application is rejected.

. Trial is expedited.

. At this stage, it is stated that the applicant is suffering from partial paralysis. Needless to say that the jail authorities shall provide all the necessary medical treatment to the applicant. Liberty to the applicant to prefer a fresh application for bail on medical ground.

(SMT.V.K.TAHILRAMANI,J.)